

Message Text

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C O N F I D E N T I A L STATE 062071

NODIS

WH FOR DR. BRZEZINSKI

FOLLOWING IS REPEAT SEOUL 2264, SENT SECSTATE 21 MARCH:

QUOTE C O N F I D E N T I A L SEOUL 2264

NODIS

EO 11652: GDS

TAGS: PFOR PINT KS

SUBJ: MYONGDONG TRIALS

REF: (A) STATE 61974; (B) SEOUL 10244, 12/29/76

SUMMARY: I CONFIRMED TO ACTING FOREIGN MINISTER YOON THIS MORNING (MARCH 21) THAT WE WILL NOT REMAIN SILENT ON FURTHER ROKG ACTION ON MYONGDONG TRIALS. HE REQUESTED AGAIN THAT USG COMMENTS BE "MILD" TAKING INTO ACCOUNT ROKG'S SECURITY PROBLEMS. HE GAVE ME A FURTHER DESCRIPTION OF THE PROCESS, WHICH WE CONFIRMED WITH INISTRY OF JUSTICE AND SUPREME COURT SOURCES. END SUMMARY.

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1. IN ACCORDANCE WITH INSTRUCTIONS, I CALLED ON ACTING FOREIGN MINISTER MORNING MARCH 21 CONFIRMING THAT WE WOULD ISSUE A STATEMENT IN YONNECTION WITH THE SUPREME COURT ACTION ON THE MYONGDONG TRIAL. I ALSO TOO THE OPPORTUNITY TO REEMPHASIZE OUR CONCERN AND COMMITMENT TO THE QUESTION OF HUMAN RIGHTS.

2. IN RESPONSE, YOON SAID THAT HE HAD EXPECTED A COMMENT BY USG BUT HOPED THAT IT WOULD BE "MILD". HE POINTED OUT THAT THAT HAD BEEN THE ESSENCE OF HIS SATURDAY MESSAGE. HE REPEATED HIS HOPE THAT OUR STATEMENT WOULD NOT APPEAR AS INTERFERENCE WITH THE DULY CONSTITUTED JUDICIAL PROCESS OR THAT BY ITS WORDING OR TONE LEAD TO THE NECESSITY OF A RESPONSE BY ROKG. HE CONFIDENTIALLY TOLD ME THAT RECENTLY THE ROKG WAS ABLE TO RELEASE SOME JAPANESE DEFENDANTS (SEE REF B). THE ROKG WAS ABLE TO TAKE THAT ACTION BECAUSE NO PUBLIC PRESSURE HAD BEEN BROUGHT TO BEAR ON IT BY THE JAPANESE GOVERNMENT AND HE NOTED THAT NO SUBSEQUENT PUBLICITY EMANATED FROM THE ROKG DECISION.

3. HE THEN WENT ON TO NOTE AGAIN THAT THE MYONG DONG TRIALS HAD NOTHING TO DO WITH HUMAN RIGHTS, SINCE THE DEFENDANTS HAD BEEN TRIED AND CONVICTED UNDER ASSEMBLY-APPROVED LAWS WHICH WERE IN ACCORDANCE WITH A PROPERLY-APPROVED CONSTITUTION. THEREFORE, THE MYONGDONG TRIAL ISSUE WAS A LEGAL MATTER AND NOT ONE RELATED TO HUMAN RIGHTS. HE FURTHER NOTED THAT THE DEPARTMENT'S REPORT ON THE HUMAN RIGHTS SITUATION IN KOREA DID NOT ASSERT THAT THE CONSTITUTION WAS NOT IN ACCORDANCE WITH THE UNIVERSAL DECLARATION ON HUMAN RIGHTS. HIS QUESTION, THEREFORE, WAS, "IF THE CONSTITUTION IS IN ACCORDANCE WITH THE DECLARATION OF HUMAN RIGHTS AND THE LAWS STEMMING FROM THAT CONSTITUTION WERE LEGALLY PASSED, HOW COULD THE TRIAL BE A VIOLATION OF HUMAN RIGHTS?" IN RESPONSE, I POINTED OUT THAT OUR CONCERN WAS WITH CONFIDENTIAL

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OPPORTUNITY FOR PEOPLE TO SPEAK THEIR MINDS ABOUT POLITICAL MATTERS WITHOUT RISK TO THEIR PERSONAL SAFETY.

4. YOON POINTED OUT THAT THE EMERGENCY LAWS WERE OF A TEMPORARY NATURE AND THAT HIS GOVERNMENT HAD ALWAYS HOPED TO STRIVE TOWARDS A WESTERN STYLE DEMOCRACY WHEN THE SECURITY SITUATION ON THE PENINSULA PERMITTED IT. HE WENT ON AT SOME LENGTH TO DESCRIBE THE DANGERS THAT FACED THE ROKG, BOTH FROM THE NORTH AND FROM INTERNAL INSTABILITY. HE COULD NOT SEE HOW HIS GOVERNMENT COULD AFFORD TO TAKE ANY RISKS WHICH MIGHT ENDANGER THE SECURITY OF HIS COUNTRY. HE PLEADED THAT WE UNDERSTAND THIS UNIQUE SITUATION AND THAT WE PUT SOME CONFIDENCE IN HIS GOVERNMENT'S WILLINGNESS TO STRIVE FOR A DEMOCRATIC SOCIETY AS SOON AS THE SECURITY SITUATION PERMITTED IT.

5. I SAID THAT I FULLY UNDERSTOOD HIS GOVERNMENT'S CONCERN FOR ITS SECURITY AND THAT IT WAS OBVIOUS FROM PUBLIC COMMENTS WE HAD MADE THAT WE HAD RECOGNIZED THE

VERY DIFFICULT CIRCUMSTANCES WHICH EXIST ON THE PENINSULA. ON THE OTHER HAND, HE HAD TO UNDERSTAND THAT WE HAD A VERY DEEP COMMITMENT TO THE IMPROVEMENT OF HUMAN RIGHTS SITUATIONS THROUGHOUT THE WORLD. I SAID I WAS SURE THAT IT WAS IN THE INTEREST OF BOTH OF OUR GOVERNMENTS TO ASSURE A CHANGE IN THE SITUATION IN SOUTH KOREA, NOT ONLY BECAUSE OF OUR COMMITMENT TO THE FREEDOM OF INDIVIDUALS AND THE NEED TO MARSHALL U.S. PUBLIC SUPPORT FOR ROK, BUT ALSO TO ENSURE THAT NORTH KOREA DID NOT MISUNDERSTAND OUR CLOSE TIES TO THE ROK.

6. AS FAR AS THE LEGAL SITUATION IS CONCERNED, YOON ADMITTED THAT HE IS NOT AN EXPERT ON THE SUBJECT, BUT HE UNDERSTOOD, AS HE MENTIONED TO ME ON SATURDAY, THAT THE SUPREME COURT WOULD RENDER A DECISION TOMORROW (MARCH 22). IF THE DECISION WERE THAT THE APPLICABLE LAW HAD BEEN APPROPRIATELY APPLIED, THEN THE CASE WOULD BE CONFIDENTIAL

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BE REMANDED TO THE APPEALS COURT WHOSE LAST JUDGMENT WOULD THEN BECOME FINAL. AFTER THE JUDGMENT IS FINAL, THE CASE IS REFERRED TO THE EXECUTIVE BRANCH (I.E. MINISTRY OF JUSTICE) FOR IMPLEMENTATION.

7. CLEMENCY CAN BE GRANTED BY THE PRESIDENT AS A RESULT OF A RECOMMENDATION BY THE MINISTRY OF JUSTICE. CLEMENCY CAN CONSIST OF REDUCTION OF SENTENCE OR COMPLETE AMNESTY. DEFENDANTS CAN APPEAL FOR CLEMENCY BUT THERE DO NOT APPEAR TO BE ANY CLEAR LEGAL REQUIREMENTS THAT SUCH APPEAL BE EITHER RECOGNIZED OR ACTED UPON.

8. FROM SOURCES IN MINISTRY OF JUSTICE AND IN SUPREME COURT, WE RECEIVED CONFIRMATION OF THE PROCESS AS DESCRIBED IN SEOUL 10293 (1976). SUPREME COURT HAS MANY OPTIONS INCLUDING SUBSTITUTING ITS OWN DECISION FOR THAT OF LOWER COURTS OR RETURNING A CASE TO LOWER COURTS FOR REHEARING OR OTHER ADJUSTMENT. (COMMENT: THIS DOES NOT SEEM LIKELY TO OCCUR IN THIS CASE).

9. IF SUPREME COURT UPHOLDS LOWER COURT RULING, DEFENSE ATTORNEYS MAY FILE MOTION FOR REOPENING OF TRIAL BUT ONLY ON GROUNDS THAT EVIDENCE ON WHICH DECISION BASED WAS FORGED OR ALTERED OR THAT TESTIMONY WAS FALSE, ETC. RE-EXAMINATION ON THESE GROUNDS HAS BEEN RARE.

10. COMMENT: IT IS QUOTE CLEAR THAT THE ROK EXPECTS SOME COMMENTARY BY US CONCERNING THE SUPREME COURT DECISION OF TOMORROW (MARCH 22). IT HOPES, OF COURSE, THAT THE COMMENT WILL BE SUFFICIENTLY "MILD" SO THAT IT DOES NOT HAVE TO RESPOND TO IT AND THAT ANY COMMENT

MADE TAKES INTO ACCOUNT ITS VIEWS AT LEAST OF THE SECURITY
PROBLEMS ON THE PENINSULA AND PERHAPS EVEN ITS POSITION
THAT SINCE THE PROCEEDINGS WERE IN ACCORDANCE WITH KOREAN
DUE PROCESS, NO VIOLATION OF HUMAN RIGHTS IS, IN FACT,
TAKING PLACE. I SUSPECT THEY DON'T HAVE MUCH HOPE THAT
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WE WILL ACCEPT THE LATTER POINT, NBUT THE POINT ABOUT
THEIR SECURITY PROBLEM IS CONSISTENT WITH OTHER STATE-
MENTS WE HAVE MADE. WE ARE ALSO BEING WARNED THAT TOO
STRONG A STATEMENT WILL MAKE IT DIFFICULT FOR PRESIDENT
PARK TO CONSIDER CLEMENCY WITHOUT LOOKING LIKE HE IS
CAVING IN TO FOREIGN PRESSURE. HOWEVER, EVEN A "MILD"
STATEMENT IS NO GUARANTEE THAT CLEMENCY WILL BE GRANTED.
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